

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN

Monday, February 8, 2016, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Jeff Willis, Vice-President; Bill Byers, Doris Horn, Brad Overton and Richard Reid.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, staff.

MEMBERS ABSENT: Amanda Mosiman

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Jeff Willis and seconded by Brad Overton, the Minutes of the last regular meeting held January 11, 2016, were approved as circulated.

The President stated they were going to vary slightly from the published agenda in order to hear the only application on the agenda.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-16-02 – Wren Lake Subdivision #2 by Lake Group, Inc., Stu Phillips, Pres. OWNER: Same. 31.25 acres located on the W side of Stevenson Station Rd. approximately 625' S of the intersection formed by Stevenson Station Rd. (W 1025) & Ayrshire Rd. (N 150), Campbell Twp. *Complete legal on file. Advertised in the Standard January 28, 2016.*

Jerry Aigner, Vice President, Lake Group and Bill Bivins, LS, ACCU Survey, were present.

The President called for a staff report.

Mrs. Rector stated they still need to submit two green cards from Kevin & Stephanie Lindy and Chad & Angel Stanley from the certified mail of notice to the adjacent property owners. She said they do have the white pay receipts showing they were mailed to the correct address within the 21 day mailing deadline. She added the subject property is zoned Agriculture which requires 2.5 acres if on septic system. She said this is a five lot subdivision with each lot ranging from 4.2 acres to 8.0 acres. She added there is no flood plain on the property. She said the County Commissioners approved a request for no improvements to Stevenson Station Road. She said they also approved two shared driveways; one between Lots 18 & 19 and one between Lots 20 & 21. She added the shared driveways will either have to be installed prior to the recording of the secondary plat or the developer

will have to post surety to guarantee the construction. Mrs. Rector said they are requesting a modification from the Subdivision Control Ordinance to not be required to install sidewalks and the Plan Commission must approve that request. She said they had a request for no drainage plans which was approved. She said each lot has an approved septic site and Chandler Water has capacity to serve the subdivision. She said the plat is in technical conformity with the Subdivision Control Ordinance and this is a continuation of the existing Wren Lake Subdivision.

The President asked if they had anything to add.

Mr. Aigner stated this is a continuation of Wren Lake. He said people keep asking for acreage to build on.

The President asked if there are sidewalks in the existing Wren Lake.

Mr. Aigner stated there are not.

Richard Reid stated the Drainage Board put a stipulation that if there is a problem with the drainage on the Luck's property they would put in a drain away from them.

Bill Bivins stated they don't foresee any problems but they will take care of it.

Mrs. Rector said so the Drainage Board agreed to no drainage plans unless there is a problem and then they will put in a pipe.

Bill Bivins said they agreed to control the drainage.

Richard Reid said they agreed to control the drainage and he didn't think that would be a problem for Mr. Aigner.

Mr. Aigner said Stevenson Station Road is an Amax built road that doesn't have a ditch. He said the ditch along Mr. Luck's property is crooked but he doesn't know what Mr. Luck is talking about because they haven't touched the property except to drive in survey pins.

Guy Gentry said perhaps he is concerned about what may happen.

Mr. Aigner said when they put in driveways they will have to put in pipes to run the water though but they won't back water up on Mr. Luck.

Ascertaining there were no other comments from the Board and being no remonstrators present, the President called for a motion on the request for no sidewalks.

Richard Reid made a motion to waive the sidewalks. The motion was seconded by Doris Horn and unanimously carried.

The President then called for a motion on the plat.

Richard Reid made a motion to approve PP-16-02. The motion was seconded by Doris Horn and unanimously carried.

Mr. Aigner thanked the Board members for coming out in this cold weather.

ADOPTION OF RULES AND REGULATIONS:

The President stated they agreed to continue under the 2015 Rules and said they could amend them later because of a discussion over time limits on speakers.

Mrs. Rector stated she emailed them what Vanderburgh County's are and what Warrick County's still are. She said the time limits are still in the Rules of Procedure but they just started not enforcing them and they never changed the Rules of Procedure. She said they need to let everybody speak and actually 3 minutes a person is a long time for each person to speak. She suggested then if they have something new to add after everyone else gets finished speaking they could have another 3 minutes which gives 6 minutes total.

Richard Reid asked who would determine the "newness" and time.

Mrs. Rector said they used to have a timer that set on the counter that would go off.

Doris Horn said they did.

Jeff Willis said if you tell people just new information most people will follow that.

Doris Horn said in the past they got into some heated discussion and that is where they mainly had the problems. She asked how many times they would limit someone from coming up because sometimes in the past people wanted to come back up two or three times.

Mrs. Rector said she would think twice is sufficient. She said it is up to the Board and if they want it to stay the same that is fine but she didn't realize the old time limits were still in the Rules of Procedure and she guessed they decided at a meeting upon the advice of their Attorney that they couldn't set time limits. She said they can set time limits if they want and most Commissions do.

The President stated they have had some time to think about this and have a little more clarification and again they can amend the Rules at any time, it doesn't have to be tonight. He asked what the Board wished.

Doris Horn said she thinks they should be prepared for the future and they never know what is going to come up in the County that could be controversial and at least they would have something laid out for a guideline. She said it wouldn't hurt to have a time limit.

Bill Byers said they had a situation a while back.

Doris Horn said we had them before and it was nice to have a limit.

Guy Gentry asked if she had formulated in her mind to an amount.

Doris Horn made a motion to set a time limit on speakers and they can only come up twice to speak.

Mrs. Rector said right now the petitioner has 20 minutes. She said Evansville has 10 minutes. She said their rebuttal is 5 minutes so that gives the petitioner a total of 25 minutes and the remonstrators total has 20 minutes. She said that is whether there are 2 remonstrators or 20 remonstrators.

Jeff Willis said will each speaker get 10 minutes or is it total. He said during the park board presentation at the BZA meeting there were several presenters.

Mrs. Rector said if they did 10 or 20 minutes for the petitioner it is the total minutes and you could eliminate the 5-6 person presentation that one person could do.

Jeff Willis said it was a nice presentation but he knows it was over the 20 minutes. He said sometimes they may need a longer presentation.

Mrs. Rector said they can amend the Rules anytime and grant more speaking time. She said these are guidelines. She said that makes a difference as a guideline instead of saying "they shall only have".

Attorney Doll said absolutes are a problem.

Doris Horn said it was nice to have a time limit on things because in the past they had people lined up out in the hall to speak. She said they don't know what is coming up and they need to be prepared.

Mrs. Rector said Doris started with a motion and asked if she has times.

Doris Horn said she figures ten minutes for the petitioner and 5 minutes for the remonstrators.

Mrs. Rector asked five minutes each?

Doris Horn asked if there is a way they could just allow one person to speak against the petition.

Attorney Doll said no.

Doris Horn said then she would make it 3 minutes and allow them to come back up one more time with new information and two times would be the limit. She said then rebuttal would be five minutes.

Bill Byers asked what about if more than one person was doing the presentation.

Attorney Doll said they just saw that at the last BZA meeting; they had five presenters.

Bill Byers asked how they would handle that.

Guy Gentry said they will need to figure out how to divide up their ten minutes or ask for an extension if they know they will need longer.

Bill Byers said it would have to be very complicated if it takes over ten minutes.

Guy Gentry said that the staff report covers all the pertinent information. He said 90% of the people will say after the staff report that they have nothing further to add. He said it is the ones trying to hard sell or show boats trying to get their money's worth.

Mrs. Rector reiterated that the motion is ten minutes for petitioners, 3 minutes for each remonstrator (limited to 2 times speaking) and a five minute rebuttal.

Doris Horn said that is correct.

Brad Overton asked if the President could limit it as it is now.

Attorney Doll said he can stop things like repetitive presentations but he has to tell them he feels they are opening themselves up to a lawsuit if they have time limitations that are strictly adhered to. He said the Supreme Court has ruled that it is a denial of due process/freedom of speech.

Brad Overton said that is what he is getting at. He said if they are saying the same thing over and over they can stop that.

Attorney Doll said they can do that and if there is a reasonable grounds to cut off debate; it has become a personal attack against a human being and not germane to the application or it is repetitive. He said at that point in time you can cut off debate but he understands other counties have it but other counties have been sued. He said all he can advise is the Supreme Court has held that there was a denial of due process in a zoning hearing and ordered remanded back to the zoning board for another public hearing.

Mrs. Rector said the Indiana Cities and Towns got together with Evansville and they said it was not a violation and that the Commission had the right to limit and they don't even have to let the people speak.

Attorney Doll said he wholeheartedly disagrees.

Mrs. Rector said she asked Vanderburgh County what they did and they sent an email that says it is regulated by Indiana Code that the Plan Commission sets their guidelines for their meetings.

Attorney Doll said they do set their own rules.

Mrs. Rector said that is why she brought this up.

Attorney Doll said it is just a question of whether they think the rules will be challenged by some group that is adversely ruled against if they wanted more time to make a presentation and was denied that. He said they had a hearing on a used car lot and there was a lot of mothers present and it rambled on and had they lost the decision and wanted to bring a suit that might have been one of the grounds they could have raised in the litigation; whether they had ample time to remonstrate against the application.

Guy Gentry said they all did have ample time. He said he tried to cut it off after 30 minutes and was challenged by a man in the audience that he was not giving him his due process and so he apologized and let it go on. He said they still had to go with no recommendation because there were only four board members present.

Bill Byers said they also had a lot of remonstrators with the subdivision at Bell Road and Telephone Road about the drainage. He said he isn't as concerned about a time limit as he is about the number of people. He said as long as there is a different argument he thinks they will have trouble shutting them out.

The President said if it is something different then they want to hear it but typically there is only about four or five points to cover and you have eight people who repeat the same things.

Jeff Willis said with the petition in Triple Crown Estates and the car lot the people were going on and on about emotional stuff it seems like forever and a lot of the facts kind of got lost in the debate.

Mrs. Rector said that is why she thinks if they know they have three minutes to speak they know they better make some good points and not about "oh if my baby gets out in the street and gets hurt". She said she would know she would have to come up with some good points for the Board to listen to and so the emotions get out of the talk and more facts get put in.

Bill Byers said they had that with the Lincoln Avenue retirement home.

Attorney Doll said when courts decide to set time limits in their proceedings they normally announce a global number for each side. He said when the Judge takes the bench they will say you have thirty minutes per side, tell the court how you wish to divide that. He said they actually give the participants control over their own destiny. He said for example, for the case in chief generally what most lawyers will say is they will use 20 minutes to present their case and 10 minutes in rebuttal. He said normally they want the biggest part in the salesmanship portion of the argument and then zero in on the rebuttal on the points that were made. He said he thinks that reduces the harm or the potential for harm because they have let them control their own destiny. He said it is easy to for the petitioner because that is organized by one entity or person but it is not so easy with the remonstrators but in almost every case there is one rebel rouser that has everyone organized or stirred up and sort of is the ringmaster so you could be giving them the option to control that and so instead of giving ten minutes, three minutes, five minutes, he would encourage them to say their guideline is ____; they don't want any repetitive presentation and each side gets "x" number. He said he thinks they have to be equal times or it would be per say a violation of someone's rights.

Mrs. Rector said that is what they have now; twenty and twenty.

Mr. Doll said he thinks they should say this is the allotted amount of time on the agenda for their case and how you wish to use it is up to them. He said they should tell the Board how they wish to use the time. He said he thinks that will stand a challenge better.

Mrs. Rector said now they have twenty, twenty and five; the five is for rebuttal.

Attorney Doll said he thinks it should just be a solid number and they can decide how much rebuttal they will set aside and they should tell the Board how they want to use their time.

Richard Reid said that might be hard because some people may complain they didn't get to speak.

Attorney Doll said most of the time there is a rebel rouser, an organizer, and you let them control the floor of the rebuttal. He said he thinks they will get a more organized presentation. He said they will simply say they have two rules, each side has twenty minutes and you have to tell the Board how you plan to use it.

Guy Gentry said he can remember telling people they have ten minutes left and so they have done this in the past.

Attorney Doll said they also need to say there is no repetitive presentations and proper decorum.

Jeff Willis said at the last BZA meeting the Parks Department made their presentation and then there were some clubs here in support of the park and also people against the park.

Attorney Doll said he felt the clubs were coordinated to be there in support of the park. He said the applicant brought them.

Guy Gentry said but he always asks for remonstrators for or against the petition. He said so now if there are people present in favor of the petition then they will be in the petitioners twenty minutes.

Attorney Doll said he thinks so. He said the right word is remonstrators and it isn't necessarily against the application they can be in favor of it. He said he would recommend they think about an allotted amount of time for each side and announce it at the meeting and let them decide how to allot their time. He said also remind them of proper decorum and no repetitiveness and that everything is being recorded for record.

Jeff Willis said in some meetings people attend just wanting to know what is going on.

Brad Overton asked if numbers would be a persuading factor whether the Board voted for against something...he asked if the best way to present the number of people against an application is via a petition.

Attorney Doll said it has been done that way; allow people to submit a petition and it become part of the application. He said another way is to have people just stand up with a show of hands.

Brad Overton said that is his concern is if they go to a set time...if you limit the time there may be over 500 people and they would just like to say they are against it or whatever.

Attorney Doll said the sheer volume of participants on one side or another of a question is not a legal way to decide an application. He said they have to decide whether it fits the public purpose and all the other things.

Mrs. Rector said they have had applications in the past where the people would ask the audience to raise their hands if they were in agreement with what they said.

Attorney Doll said if they do say a time guideline then they will also have to track it or watch the time. He said then also if they get in the middle of a heated battle they can always grant additional time but it would have to be added to both sides.

Doris Horn amended her motion for each side to have a guideline of up to twenty minutes and it would be up to them to decide if they want to reserve some for rebuttal, that the time be monitored and that the President would have the authority to extend the time with their discretion of just cause; and no repetitiveness and proper decorum. The motion was seconded Richard Reid. Brad Overton voted against the motion and all other members voted for the motion.

Discussion ensued that notification could be given before the meeting and also post it on the doors with the agenda.

Mrs. Rector said the staff can also let people know when they call in about an application.

Brad Overton said for clarification he would rather see it at thirty minutes.

The President said they can see how this goes and it can be considered if they have to give very many time extensions.

SET MEETING DATES, TIME, AND PLACE:

Meetings to be held on the 2nd Monday at 6:00PM of each month in Commissioners Meeting Room, Third Floor, Court House, Boonville, Indiana.)

Mrs. Rector said this was forgotten on last month's agenda. She said they normally meeting on the second Monday at 6:00 p.m and there is no holidays to interfere.

Bill Byers made a motion to hold the meetings on the 2nd Monday at 6:00PM of each month in Commissioners Meeting Room, Third Floor, Court House, Boonville, Indiana. The motion was seconded by Brad Overton and unanimously carried.

OTHER BUSINESS:

Proposed Ordinances:

Mrs. Rector said she has sent them a couple of ordinances she has worked on. She said they are where they are moving the package liquor store out of "C-1" to "C-2" and also include restaurants serving alcohol in a "C-2" zoning.

Brad Overton made a motion to advertise the ordinances and bring them back next month. The motion was seconded by Bill Byers and unanimously carried.

ATTORNEY BUSINESS:

None.

EXECUTIVE DIRECTOR BUSINESS:

Tiny Houses

Mrs. Rector asked if they knew what a tiny house is. She said there is a show on television about people who build and live in them. She said a woman came into the office a few days ago that wants to build one for her child on a lot next door to her house. She said the lady also said that she and her husband may want to start building them to sell. She said she has never thought about this tiny house trend and planning and zoning. She said in our ordinance the minimum square footage for a single family dwelling is 720 square feet and the tiny houses are 200 to 300 square feet. She said she called Dennis Lockhart, the Building Inspector, who said they would have to meet residential building code. Mrs. Rector said she also called Bill Pedtke at the Evansville Home Builders and he didn't know and said he was going to have to call Indianapolis about them. She said she also went online to read about them and found that most of them won't meet building codes. She said the little bedroom lofts will not meet code because they need a window with ingress egress out of them.

Attorney Doll said that would require a dormer.

Mrs. Rector said a lot of the tiny houses are on wheels and people move them. She said in most states that she has read about they classify them as an RV and in some states you have to go to the DMV and register them. She said they also call them grandma pods for people to put their parents in one. She said but this woman wants to know about starting to make tiny homes.

Richard Reid said why not just keep it at the 720 square feet.

Mrs. Rector and just say there is no...she said she thinks this is a thing that is coming.

Jeff Willis asked if they could do a Variance to put it on a lot.

Richard Reid said it sounds more like a storage shed to him.

Mrs. Rector said some of them are amazing and they are not cheap. She said she does think it is an up and coming thing they may have to look at. She then asked the Board if it is something they want to look at or just say no, it has to be 720 square feet for a residence, period.

Jeff Willis asked if they could get a Variance for the size.

Mrs. Rector said they could ask for a Variance from anything.

Bill Byers said but they can't live in it if it under 720 square feet.

Attorney Doll said the problem with the Variance is going to be building code. He said they may get a Variance on square footage but they would still have to meet building codes.

Mrs. Rector said she also read on the Indiana Code website that if someone builds a house themselves and live in it you don't have to meet code.

Attorney Doll said that is "self-constructed" but you also may have the inability to sell it.

Mrs. Rector said she didn't know that, she thought you had to meet code no matter what. She then asked what they want her to tell the lady.

Guy Gentry asked what about people who have RV's and park them on their relatives' property for four months out of the year.

Mrs. Rector said they ruled a few years ago that RV was the same as a mobile home and they were living in it for even a short period of time, they would have to get a Variance.

Bill Byers then asked about treehouses.

Discussion ensued over treehouses in Warrick County and that no permits are required for treehouses.

Attorney Doll said right now Mrs. Rector should tell the woman that currently the square footage is 720 square feet but the Commission is researching it.

Being no other business the meeting adjourned at 6:50 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director